IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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SUPREME COURT, U.S.

NO. 82-5576

JEFFREY LEE PICKETT, by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT

v.

BRAXTON BROWN, Appellee

and

WILLIAM M. LEECH, JR., Intervenor-Appellee

ON APPEAL FROM THE SUPREME COURT OF TENNESSEE

JURISDICTIONAL STATEMENT

October, 1982

Harold W. Horne
Counsel for Appellant

Horne & Peppel, P.C.
474 S. Perkins Extd.
Suite 205
Memphis, Tennessee 38117
(901) 761-3140

QUESTIONS PRESENTED

1. Whether Tennessee Code Annotated § 36-224(2) violates the Fourteenth Amendment of the constitution of the United States by creating an illegitimacy classification, based upon welfare status, that denies the appellant, an illegitimate child not receiving state welfare, the right to sue for paternal support while imposing no such restriction on illegitimate children who are similarly situated, but who receive welfare, said classification bearing no relationship to an important state interest.

2. Whether Tennessee Code Annotated § 36-224(2) violates the Fourteenth Amendment of the constitution of the United States by creating an illegitimacy classification that denies the appellant, an illegitimate child, the right to sue for paternal child support while imposing no such restriction on legitimate children, similarly situated, and without bearing relationship to an important state interest.

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OPINIONS BELOW

The opinion of the trial court finding Tennessee Code Annotated § 36-224(2) unconstitutional is not reported and may be found in the appendix at pages 27-34.

The opinion of the Supreme Court of Tennessee reversing the trial court and upholding the statutes constitutionality is reported at _____S.W. 2d _____ and may be found in the appendix at pages 1-26.

GROUNDS FOR JURISDICTION

NATURE OF PROCEEDING:

This is a paternity case filed pursuant to Tennessee Code Annotated § 36-224. Suit was brought by the minor illegitimate child - by and through his mother.

The defendant moved the court to dismiss the suit based upon Tennessee's statute of limitations as set out in Tennessee Code Annotated § 36-224(2). At the earliest stage possible, appellant raised the claim, in response to the motion to dismiss, that § 36-224(2) of the Tennessee Code violates the constitutional rights of illegitimate children, and that such statute violates those rights set out in the United States Constitution by the Fourteenth Amendment. The trial court ruled said statute was unconstitutional. The defendant and the Attorney General of Tennessee appealed the trial court's ruling to the Supreme Court of Tennessee.

JUDGMENT SOUGHT TO BE REVIEWED:

The Fourteenth Amendment claim was reiterated by appellant before the Supreme Court of Tennessee. On August 30, 1982, the Supreme Court reversed the trial court's opinion stating: ". . . The rulings of the trial court are reversed and this action is dismissed."

The Supreme Court cited Mills v. Habluetzel, 102 S.Ct. 1549 (1982), in rendering its opinion, stating at page 21, (appendix page 22) lines 5-20:

> "The Mills case definitely holds that the expressed state interest in having a statute of limitations upon paternity actions - preventing litigation of stale and fraudulent claims - is a valid one. It has held that one year is as a matter of law too short a time for the mother to make a decision, because of financial, emotional, and, we might add, physical strains and problems which very often endure through many months after childbirth. Even though these and other circumstances might also endure beyond the first year, we cannot say as a matter of law that the legislature could not rationally determine that such a possibility became outweighted by the state's interest in prohibiting litigation of stale and fraudulent claims. The legislature could rationally determine that two years is long enough for most women to have recovered physically and emotionally, and to be able to access their and their children's situations logically and realistically.

On the other hand, the Supreme Court of Tennessee on the same date, August 30, 1982, filed an unreported opinion, Tennessee Department of Human Services, Assignee of Delores Anne King vs. Luther Leon Lumley, stating at page 4 (appendix page 39), lines 18-23:

> That is to say, Pickett holds that T.C.A. § 36-224(2) creates an exception to the general two-year limitation period in paternity

actions; and that in any case where the child is or is likely to become a public charge, suit may be filed by the Department of Human Services throughout the eighteen years after the birth of the child.

From Pickett, appendix page 23, lines 12-14:

> * * * * The state's counterveiling interest in doing justice and reducing the number of people on welfare is served by allowing the state a longer time during which to sue.

The court brushed aside the issue raised by the fact that in all other cases in Tennessee the statute of limitations is tolled during the child's minority. At page 22 (appendix page 23), lines 20-25 the court stated:

> * * * This leaves the court's concern that the limitation period is unique in not being tolled during the plaintiff's minority, but we do not find that this factor alone requires a holding of unconstitutionality of a two year period, as opposed to any other period which can end during the plaintiff's minority."

The Supreme Court of Tennessee thus considered and expressly rejected the federal constitutional claims.

On September 9, 1982, appellant filed a notice with the Supreme Court of Tennessee that the opinion would be appealed to the United States Supreme Court.

JURISDICTIONAL STATUTE:

This appeal is docketed in this court within ninety (90) days from the final order of the Supreme Court of Tennessee upholding the constitutionality of Tennessee Code Annotated § 36-224(2). The jurisdiction of this court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

PERTAINING TO APPEAL

1. The Fourteenth Amendment, United States Constitution:

> . . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . .

2. Tennessee Code Annotated § 36-224(1) & (2):

> (1) A petition to establish paternity of a child, to change the name of the child if it is desired, and to compel the father to furnish support and education for the child in accordance with this chapter may be filed by the mother, or her personal representative, or, if the child is likely to become a public charge by the state department of human services or by any person. Said petition may be filed in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside this state shall not be a bar to filing a petition against the putative father. After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend.
>
> (2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the department of human services or any person shall be empowered to bring a suit in behalf of any child under the age of 18 who is, or is liable to become a public charge.

3. Tennessee Code Annotated, § 28-1-106:

> If the person entitled to commence an action is, at the time the cause of action accrued * * * within the age of eighteen (18) years * * * such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from the removal of such disability.

STATEMENT OF THE CASE

Frances Annette Pickett filed a petition to establish paternity pursuant to Tennessee Code Annotated § 36-224, alleging that Braxton Brown is the natural father of her son, Jeffrey Lee Pickett, born November 1, 1968. This petition was filed May 24, 1978. The purpose of the suit was to establish the parent-child relationship between Braxton Brown and Jeffrey Lee Pickett and to obtain child support for said child.

Braxton Brown denied paternity and moved to dismiss the petition based upon the two year statute of limitations set out in Tennessee Code Annotated § 36-224(2). In response to the motion to dismiss, Frances Pickett filed a motion challenging the constitutionality of Tennessee Code Annotated § 36-224(2) and moved the court to amend the petition to be brought in the name of her son. The attorney general of Tennessee intervened to uphold the constitutionality of the state statute.

The parties stipulated that Jeffrey Lee Pickett was not a public charge, and that the defendant, Braxton Brown, had never acknowledged said child nor provided support.

The Honorable Kenneth A. Turner, Judge, overruled the defendant's motion to dismiss declaring said statute to be unconstitutional. The trial court found that the statute discriminated against illegitimate as opposed to legitimate children and that the statute also discriminated against illegitimate children not receiving welfare as opposed to illegitimate children who were a public charge. The judge

further ordered that the petition be brought in the name of the minor child by Frances Pickett as next friend. This order was entered April 24, 1980 (see appendix for full opinion, pages 27-34).

The state of Tennessee and the defendant appealed the trial court's ruling to the Supreme Court of Tennessee. On August 30, 1982, the Supreme Court of Tennessee entered an opinion which upheld the constitutionality of the two year statute of limitations in non-welfare cases. The trial court's opinion was reversed and the petition to legitimate the child was dismissed.

THE QUESTION IS SUBSTANTIAL

The questions as to whether a two year statute of limitations on paternity actions invidiously discriminates against illegitimate children so as to deny them due process and equal protection due under the Fourteenth Amendment is substantial. It has never been decided by this court,[1] although Texas' one year statute of limitations was declared unconstitutional in Mills v. Habluetzel, 102 S.Ct. 1549 (1982).

The fact that there are potentional constitutional problems which exist with a statute of limitations on paternity actions appeared to be acknowledged by this court in

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1. In Cessna v. Montgomery, 344 N.E. 2d 447 (Ill. 1976); State v. Witkowski, 256 N.W. 2d 216 (Iowa 1977); and Thompson v. Thompson, 404 A. 2d 269 (Md. 1979) the state supreme courts upheld the constitutionality of two (2) year statute of limitations in paternity cases.

However, in State v. Wilson, 634 P. 2d 172 (Mont. 1981); Stringer v. Dudoich, 583 P. 2d 462 (N.M. 1978); State v. West, 378 So. 2d 1220 (Fla. 1979); and County of Lenoir v. Johnson, 264 S.E. 2d 816 (N.C. 1980) the state supreme courts held that statute of limitations ranging from two to four years in paternity cases violated the federal constitution.

footnote 5 to the decision in Lalli v. Lalli, 439 U.S. 259 (1978). In that footnote, the court noted that the constitutionality of New York's two year statute of limitations was not before the court in that case because the New York Court of Appeals had not passed on it. Further, the court noted several times in the case of United States v. Clark, 445 U.S. 23 (1980), that imposing legal restrictions on illegitimate children which are not equally applicable to legitimate children raises serious equal protection problems and is open to constitutional question.

The classification created by the statute in question is unconstitutional because it is based on illegitimacy and does not bear an evident and substantial relationship to the particular interests the statute is designed to serve. The denial of equal protection by Tennessee Code Annotated § 36-224(2) manifests itself in three ways.

First, the statute prevents an illegitimate child over two years of age from being able to obtain child support from his natural father. This right is available to legitimate children in Tennessee. The failure of the state to provide equal access to support on behalf of both legitimate and illegitimate children violates this court's holding in Gomez v. Perez, 409 U.S. 535 (1973).

The second violation is the fact that the two year statute of limitations on paternity actions is the only statute of limitations applicable to civil actions on behalf of children which is not tolled during the minority of the child. The failure to provide an illegitimate child with a meaningful opportunity to have his paternity judicially established

violates this court's rule:

> "that absent a counter-veiling state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Bodie v. Connecticutt, 401 U.S. 371, 377 (1971).

The third violation is the fact that the two year statute of limitations is applicable only to illegitimate children who are not recipients of state aid. Children who are, or who are about to become, dependent on the state for aid may have their paternity established by any person up to their 18th birthday. Thus, illegitimate children who are dependent solely on their mother for support lose their right to legitimacy at the time they pass their second birthday. Illegitimate children who are dependent upon the state for welfare assistance, however, may be legitimated at any time prior to their 18th birthday.

The Tennessee Supreme Court, in upholding Tennessee Code Annotated § 36-224(2) as constitutional, has stated that the prevention of stale and fraudulent claims is in the state's interest. As was noted by the Supreme Court of North Carolina in County of Lenoir ex. rel. Cogdell v. Johnson, 264 S.E. 2d 816, 821:

> "• • • a child is entitled to support from its father throughout its minority. Therefore, a child's claim for such support at any time during its minority can never be said to be stale. Nor is [the statute] substantially related to the State's interest in preventing the litigation of fraudulent claims. We have no reason to believe that the mere passage of time bears a direct relation to the truth of the claim asserted. Moreover, the need of the child to receive adequate support manifestly outweighs the relation the statute of limitations may have to the prevention of fraudulent claims • • •."

This court has several times held that the blanket and conclusive exclusion of a certain class of illegitimates was not reasonably related to the prevention of spurious claims or prevention of fraud; Jimenez v. Weinberger, 417 U.S. 628 (1974), United States v. Clark, 445 U.S. 23 (1980).

Numerous times this court has struck down statutes which discriminate against illegitimates declaring that the statutes violate the equal protection clause. In Levy v. Louisiana , 391 U.S. 68 (1968) and Glona v. American Guaranty and Liability Ins. Co., 391 U.S. 73 (1968), the court dealt with wrongful death statutes regarding illegitimates and their mothers. In Webber v. Aetna Casualty and Surety Company, 406 U.S. 164 (1972), discriminatory workers' compensation statutes were dealt with. Gomez v. Perez, 409 U.S. 535 (1973) declared that illegitimates had an equal right to child support and other benefits accorded children generally. Jiminez v. Weinberger, 417 U.S. 628 (1974) held that blanket social security act exclusions of illegitimates was not reasonably related to the prevention of spurious claims. Trimble v. Gordon, 430 U.S. 762 (1977) held that intestate succession laws which treated legitimate and illegitimate children differently violated the equal protection clause. Mills v. Habluetzel, 102 S. Ct. 1549 (1982) declared unconstitutional a one year statute of limitations in Texas.

Even in the instances where this court has upheld state and federal law which had differing treatment of legitimate and illegitimates, this court has done so with the presumption that the illegitimate children could have

legally established their paternity within the lifetime of their alleged father. Mathews v. Lucas, 427 U.S. 495 (1976) upheld a social security act requirement which required a showing of dependency by illegitimates as well as proof of paternity. In Lalli v. Lalli, 439 U.S. 259 (1978), the court upheld a state statute requiring that paternity be judicially established during the lifetime of the father in order for an illegitimate child to inherit from the father by intestate succession.

This court has also held that fathers of illegitimate children also have protected interests in the custody and upbringing of their children which cannot be automatically disregarded merely because the children are illegitimate; Stanley v. Illinois, 405 U.S. 645 (1972), Caban v. Mohammed, 99 S. Ct. 1760 (1979). No time limits have been placed on the exercise of these privileges by the father of illegitimate children. However, by failing to strike down the Tennessee two year statute of limitations, this court will in effect have given these fathers rights without a corresponding duty to care for or support their children once the children have attained the age of two years without filing a paternity action or becoming a public charge.

This court has previously accorded numerous rights to illegitimate children without regard to their relationship to their natural fathers. These rights are currently meaningless to a substantial class of illegitimate children in Tennessee by virtue of the two year statute of limitations on paternity actions. The state has yet to set forth a legitimate balancing interest to justify the statute.

The appellants' claim of permanent denial of fundamental rights by a state statute is substantial. The statute discriminates by invidious classification and is not reasonably related to any state interests.

CONCLUSION

According to Pickett a non-welfare illegitimate child's right to paternal support and legitimation rests solely in the hands of its mother. If she fails to act within two years the child's right to support and legitimation is forever barred. The child has no independent right to legitimation (appendix: page 24, lines 1-5; page 25, lines 9-15).

An illegitimate child receiving welfare may have its paternity established by any person prior to reaching eighteen. Thus, illegitimate non-welfare children and illegitimate welfare children are treated differently. This differing treatment is discriminatory and unconstitutional.

The mother of a legitimate child cannot give away, relinquish, or lose her child's right to paternal support. That right may be asserted by and for the child any time prior to reaching eighteen. Thus, legitimate and illegitimate children are treated differently. This differing treatment is discriminatory and unconstitutional.

The sole rational offered for this statutory discrimination is that the state is trying to eliminate or prevent the litigation of stale and fradulent claims of paternity. This defense of the statute lacks merit.

If illegitimate welfare children are given eighteen years within which time to file a paternity suit and seek paternal support then there must to a compelling state interest served by not allowing other illegitimate children the same right. Pickett finds that the state has a compelling interest in preventing stale and fradulent claims and that the longer period is justified in welfare cases to protect the public purse (appendix: page 24, lines 8-12).

The opposite result, however, is fostered by this statutory scheme. Mothers of non-welfare children over two years of age are encouraged, if not forced, to seek welfare assistance if they wish to legitimate their child.

A woman receiving welfare is required to name the absent father of her child. This places the welfare recipient under great pressure and emotional strain. The desire and need for assistance versus her interest in protecting her lover from state prosecution. It will be the welfare case and not the non-welfare case that harbors the dangers of fradulent claims. Yet the period of limitations for these claims is eighteen years.

For these reasons, this court should note probable jurisdiction of this appeal.

Respectfully submitted,
Horne & Peppel, P.C.

Harold W. Horne

Harold W. Horne
474 S. Perkins Extended
Suite 205
Memphis, Tennessee 38117
(901) 761-3140

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v.

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and

WILLIAM M. LEECH, JR., Intervenor-Appellee

AFFIDAVIT OF FRANCES ANNETTE PICKETT
CONCERNING PROPERTY AND WEALTH OF JEFFREY LEE PICKETT

I, Frances Annette Pickett, being first duly sworn according to law, depose and say, in support of my son's motion for leave to proceed without being required to prepay costs or fees:

1. I am the petitioner in the above-entitled case, and am the mother and legal guardian of Jeffrey Lee Pickett.

2. Because of his poverty, Jeffrey Lee Pickett is unable to pay the costs of this cause.

3. Jeffrey Lee Pickett is unable to give security for the costs of this cause.

4. I believe that he is entitled to the redress he and I seek in this case.

5. Jeffrey Lee Pickett is unemployed, and does not own any property, real or personal. He has nor is entitled to any income from any source and is dependent solely upon me for his support.

State of Tennessee
County of Shelby

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Frances A. Pickett
Frances Annette Pickett

SUBSCRIBED AND SWORN TO before me this 6th day of September, 1982.

Harold Warner Hasse
NOTARY

my commission expires:
February 2, 1985.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO.

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BRAXTON BROWN, Appellee

and

WILLIAM M. LEECH, JR., Intervenor-Appellee

AFFIDAVIT OF FRANCES ANNETTE PICKETT

I, Frances Annette Pickett, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to pre-pay costs or fees:

1. I am the petitioner in the above-entitled case.

2. Because of my poverty, I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said cause is briefly stated as follows:

I filed a petition in Shelby County, Tennessee, to establish the paternity of my son. Under Tennessee law, a child receiving welfare may have his paternity established any time prior to his 18th birthday, but a child born out of lawful wedlock who is not dependent upon the state for support can establish his paternity only if an action is filed

by his second birthday. The trial court held the statutory scheme unconstitutional and was reversed by the Supreme Court of the state of Tennessee.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

ANSWER: I am employed by the Memphis Defense Depot, 2163 Airways Blvd., Memphis, Tennessee 38114. I am paid $8.20 per hour gross; roughly $1,312.00 gross per month.

2. Have you received within the past twelve months any income from a business, profession or other form of self- employmenmt, or in the form of rent payments, interest, dividends, or other source?

ANSWER: No.

3. To you own any cash or checking or savings account?

   a. If the answer is yes, state the total vlaue of the items owned.

ANSWER: I have a checking account with a balance of roughly $20.00 and no other cash, checking or savings accounts.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (exluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

ANSWER:

A. One acre of land at 2075 King Road, Southhaven, Mississippi 38671 worth roughly $7,000.

B. Five acres of undeveloped land in Panola County, Mississippi worth roughly $5000.

C. One 15 year old mobile home in which my son and I live, worth roughly $1,500.

D. One 1979 Dodge worth roughly $2000.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer:

My son, Jeffrey Pickett.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

State of Tennessee
County of Shelby

Frances A. Pickett
Frances Annette Pickett

SUBSCRIBED AND SWORN TO before me this 6th day of September, 1982.

Harold Warren Horne
NOTARY

my commission expires February 2, 1985.

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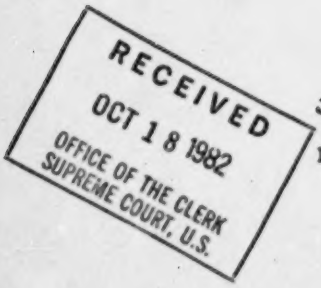
OCTOBER TERM, 1982

NO. 82-5576



JEFFREY LEE PICKETT, by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT, Petitioners

v.

BRAXTON BROWN, Appellee

and

WILLIAM M. LEECH, JR., Intervenor-Appellee

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Petitioners, Frances Annette Pickett and Jeffrey Lee Pickett, ask leave to file the attached jurisdictional statement with the United States Supreme Court without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

Affidavits in support of this motion are attached hereto.

Leave was not sought to proceed in forma pauperis in the courts below as no costs are required or taxed by the Juvenile Court of Memphis and Shelby County, Tennessee when the petition concerns child support or the paternity of a child.

Counsel was appointed for petitioners by the juvenile court below.

Respectfully submitted,
Horne & Peppel, P.C.

Harold W. Horne
counsel for petitioners
474 S. Perkins Extended
Suite 205
Memphis, Tennessee 38117
(901) 761-3140

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion and attached affidavits have been mailed by U.S. Mail, first class postage prepaid, to counsel for all parties concerned: Mr. William M. Leech, Jr., Attorney General for the State of Tennessee at 450 James Robertson Parkway, Nashville, Tennessee 37219; Ms. Susan Short-Kelly, Assistant Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219; and Mr. James R. McGarrh, Jr., counsel for Braxton Brown, at Suite 1930, 100 North Main Building, Memphis, Tennessee 38103, this the 14th day of October, 1982.

Harold W. Horne
counsel for petitioners
474 S. Perkins Extd. Suite 205
Memphis, Tennessee 38117
(901) 761-3140

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and

WILLIAM M. LEECH, JR., Intervenor-Appellee

AFFIDAVIT OF HAROLD W. HORNE - COUNSEL FOR PETITIONER

I, Harold W. Horne, being first duly sworn according to law, depose and say:

1. That attached hereto is a copy of a letter I received from the Juvenile Court of Memphis and Shelby County, Tennessee appointing me to represent petitioners in this cause.

2. By contract with Shelby County, I am appointed to represent petitioners in paternity cases who are found by the court to be unable to afford private counsel. Such a determination was made by the court in this case. By practice the appointment of counsel is announced in open court by the judge; but, the official notification is made by administrative letter rather than court order.

Harold W. Horne

State of Tennessee
County of Shelby

Harold W. Horne
Harold W. Horne

SUBSCRIBED AND SWORN TO before me this 12th day of October, 1982.

NOTARY

my commission expires
November 29, 1983

Juvenile Court of Memphis and Shelby County
CHILD SUPPORT BUREAU
P. O. BOX 310 • MEMPHIS, TENNESSEE 38101

Date 10/27/78

On or about this date Attorney Edith Harland requested that his/her name be removed from the court appointed counsel list and that their previously assigned cases be reassigned. Attorney Hal Horne agreed to take the case of Frances A. Pickett v Brian Brown, to notify opposing counsel of the change and to enter the appropriate order of substitution of counsel, if necessary.

Olen E. Bostick, Jr.
Director, Child Support Bureau

Juvenile Court of Memphis and Shelby County

CHILD SUPPORT BUREAU

P. O. BOX 310 • MEMPHIS, TENNESSEE 38101

June 1[illegible], 1[illegible]75

[illegible]dith Garland
2[illegible]0 Poplar
Suite 3[illegible]
[illegible]mphis, T[illegible]. 3[illegible]12

Frances Annette Pickett

V.

[illegible]reaton [illegible]ood

Juvenile Court Docket No. 31[illegible]70

Juvenile Court Social File No. [illegible]7[illegible]7

Dear [illegible],

The Judge of the Juvenile Court of Memphis and Shelby County, Tennessee, has appointed you to represent Frances Annette Pickett, who resides at [illegible] [illegible], Southaven [illegible]. 3[illegible]71, telephone number _____.

This case has been transferred to the Circuit Court of Shelby County for a jury trial pursuant to Section 36-227 of the Tennessee Code Annotated.

Copies of all legal records in this case are enclosed.

Yours truly,

Vicki Curtis

Vicki Curtin

Counselor
Child Support Bureau

APPROVED:

[illegible]

Director
Child Support Bureau

[illegible]

JC-201

RECEIVED
OCT 18 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-5576

JEFFREY LEE PICKETT, by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT, Petitioners

v.

BRAXTON BROWN, Appellee

and

WILLIAM M. LEECH, JR., Intervenor-Appellee

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IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FILED
AUG 30 1982
JEWEL REDDEN, CLERK
SHELBY JUVENILE

FRANCES ANNETTE PICKETT, :
Plaintiff-Appellee :
:
VS. :
:
BRAXTON BROWN, :
Defendant-Appellant :
WILLIAM H. LEECH, JR., :
Intervenor-Appellant :

REVERSED AND DISMISSED

JUDGMENT

This cause coming on to be heard upon a transcript of the record from the Juvenile Court of Shelby County, briefs and argument of counsel; upon consideration whereof this Court is of opinion that in the judgment of the trial court there is reversible error.

IT IS, THEREFORE, ORDERED AND ADJUDGED by this Court that the rulings of the trial court are reversed and this action is dismissed.

This cause is remanded to the Juvenile Court of Shelby County for the collection of the costs accrued below.

Costs of this appeal are taxed against the plaintiff-appellee, Frances Annette Pickett, for which execution may issue, if necessary.

8/30/82.

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

For Publication

August 30, 1982.

FRANCES ANNETTE PICKETT,

Plaintiff-Appellee

VS.

BRAXTON BROWN,

Defendant-Appellant

WILLIAM M. LEECH, JR.,

Intervenor-Appellant

SHELBY JUVENILE

Hon. Kenneth A. Turner, Judge

FILED

AUG 30 1982

JEWEL REDDEN, CLERK

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O P I N I O N

REVERSED and DISMISSED.

DROWOTA, J.

This appeal seeks to uphold the constitutionality of the two-year statute of limitations upon an action to establish paternity, found in TCA § 36-224(2).[1] The action was brought in May, 1978, to establish the paternity and obtain an order for support of a child born in November, 1968. The defendant argued that since the action was brought more than two years after the child's birth, and he had never acknowledged the child in writing or by furnishing support, the action was barred. The plaintiff mother filed a motion challenging the constitutionality of the section. She sought to amend her petition so as to bring it in the name of the child.

Plaintiff's grounds for urging unconstitutionality were: (1) that the two-year period denied her and her son equal protection of the law under the federal and state constitutions; (2) that it amounted to cruel and unusual punishment (not seriously pressed by plaintiff); and (3) that it deprived the child of due process of law in cutting off his rights before he was old enough to exercise them. Her argument was basically that children born out of wedlock were denied substantial benefits accorded to other children, since children born in wedlock may sue their fathers for support throughout their minority.

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1. The statute reads:

> Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the department of human services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge.

The Attorney General was allowed to intervene, since constitutionality was in issue. He argued that plaintiff had no standing to challenge the constitutionality of the exception for public charges, but that in any event, such exception was constitutional as an extension of the sovereignty of the state and because there was a rational basis for making this exception. Further, the general two-year period was constitutional because it was not a limitation upon illegitimates' right to support, which was equal to that of legitimate children. Rather, the limitation was upon establishing paternity, and was justified by the state's interest in preventing litigation of stale or spurious claims. The defendant separately argued that the statut merely limited "the time in which a mother who is able to support her child may seek reimbursement from the alleged father," and the time in which the State may seek reimbursement.

The juvenile court allowed the child to be added as a plaintiff, and held the two-year portion of the statute unconsti tutional. The effect is to allow an action to be brought throug out the child's minority. The court reasoned that an illegitima child has a right, continuing throughout minority, to support fr his father. The right is enforced by an action brought under TC § 36-222. However, such an action must, in general, be brought within two years of the child's birth, while no such limitation is imposed upon a child born in wedlock. The result is that the Legislature has treated illegitimate children differently than legitimate children. Additionally, an illegitimate child's rig to support may be cut off by his mother's failure to act, with fault on the part of the child.

The trial court also ruled that the two-year period put two state interests - the welfare of its children and preventing stale claims - in conflict. The court held that the stale claim reasoning failed because the state or any person may sue during eighteen years, when the child becomes a public charge. The court also found discrimination between children born out of wedlock, some of whom are public charges and some of whom are supported privately; even if the mother did support the child, this did not terminate the father's equal obligation to support.

The court allowed an interlocutory appeal by certifying that the constitutionality of TCA § 36-224(2) was the sole determinative question of law in the proceedings. TRAP 9, TCA § 16-40

In ruling on the equal protection challenge to the statute we begin our discussion with Mills v. Habluetzel, 50 U.S.L.W. 4372 (April 5, 1982).[2] This case held unconstitutional a Texas statute § 13.01 of Chapter 13, Title 2 of the Texas Family Code:

> A suit to establish the parent-child relationship between a child who is not the legitimate child of a

2. Because of the clarity and relevance of the Mills opinion we do not find it necessary separately to review and comment upon the line of cases decided by the Court in recent years, dealing with classifications based upon illegitimacy. See Lalli v. Lalli, 439 U.S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978); Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); Mathews v. Lucas, 427 U.S. 495, 96 S. Ct. 2755, 49 L. Ed. 2d 651 (1976); Jimenez v. Weinberger, 417 U.S. 628, 94 S. Ct. 2496, 41 L. Ed. 2d 363 (1974); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619, 93 S. Ct. 1700, 36 L. Ed. 2d 543 (1973); Gomez v. Perez, 409 U.S. 535, 93 S. Ct. 872, 35 L. Ed. 2d 56 (1973); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972); Labine v. Vincent, 401 U.S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971); Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968); Glona v. American Guarantee & Liability Ins. Co., 391 U.S. 73, 88 S. Ct. 1515, 20 L. Ed. 2d 441 (1968).

man and the child's natural father by proof of paternity must be brought before the child is one year old, or the suit is barred.

This statute was challenged on equal protection and due process grounds. Upholding the equal protection challenge, the Court did not discuss the due process issue.

The Texas Family Code, governing determinations of paternity and entitling illegitimate children to seek such a determination and establish a paternal duty of support, was Texas' response to the Court's earlier opinion in Gomez v. Perez, 409 U.S. 535, 93 S. Ct. 872, 35 L. Ed. 56 (1973). Before Gomez, illegitimates in Texas had had no judicially enforceable right to support from the natural father. As the Court stated in Gomez

> . . . a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.

Id. at 538, 35 L. Ed. 2d at 60.

Thus, in Mills, the Court had to determine whether it was constitutional for Texas to grant a right to legitimation and support, but then place a one-year statute of limitations upon the bringing of the action. The Court held that this scheme was unconstitutional. "It would hardly satisfy the demands of equal protection and the holding of Gomez to remove an 'impenetrable barrier' to support, only to replace it with an opportunity so truncated that few could utilize it effectively." 50 U.S.L.W. at 4373. Although Texas law permitted the paternity action to b

brought by any person with an interest in the child, the mother would usually be the person who would sue. For her, there would be such obstacles to bringing a suit within a year that she would effectively be denied the opportunity to sue. The hindrances listed by the Court included financial difficulties, continuing affection for the father, shame and embarrassment, and confusion. Since any suit had to be brought within a year, such time was not long enough for the state, once a claim should be assigned to it, to take steps to sue.

The Court also held that one year was "not substantially related to the State's interest in avoiding the prosecution of stale or fraudulent claims." Id. at 4374. Problems of proof do not "justify a period of limitation which so restricts those rights as effectively to extinguish them." Id.

Considering this holding, we look at other language in the Court's opinion which would cast light upon a two-year limitation:

> The fact that Texas must provide illegitimate children with a bona fide opportunity to obtain paternal support does not mean, however, that it must adopt procedures for illegitimate children that are coterminous with those accorded legitimate children. Paternal support suits on behalf of illegitimate children contain an element that such suits for legitimate children do not contain: proof of paternity. Such proof is often sketchy and strongly contested, frequently turning upon conflicting testimony from only two witnesses. Indeed, the problems of proving paternity have been recognized repeatedly by this Court. Parham v. Hughes, 441 U.S. 347, 357, 361 (1979); Lalli v. Lalli, 439 U.S. 259, 269 (1978); Trimble v. Gordon, 430 U.S. 762, 772 (1977); Gomez v. Perez, [409 U.S.] at 538.
>
> Therefore, in support suits by illegitimate children more than in support suits by legitimate children, the State has an interest in preventing

> the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the latter. Such restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest. See Lalli v. Lalli, supra, at 265; Trimble v. Gordon, supra, at 767, Mathews v. Lucas, 427 U.S. 495, 510 (1976). The State's interest in avoiding the litigation of stale or fraudulent claims will justify those periods of limitation that are sufficiently long to present a real threat of loss or diminution of evidence, or an increased vulnerability to fraudulent claims.
>
> The equal protection analysis . . ., therefore, focuses on two related requirements. First, the period for obtaining support . . . to illegitimate children must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf. Second, any time limitation placed on that opportunity must be substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims.

Id. at 4373-4374 (emphasis added).

During the pendency of the Mills case, the Texas Legislature increased the limitation period from one to four years. Thus, five Justices joined in a separate opinion to specify that by disapproving of a one-year statute, the Court did not wish to imply approval of a period longer than one year. We take this to mean simply that the Court does not wish to prejudge any other period or any other statute, but would conside each one on its own merits and on how well it meets the proble discussed by the Court in Mills. The separate opinion notes t Court's listing of circumstances surrounding the birth of an illegitimate child, which made a one-year period unconstitutional. However, other circumstances could continue for a longer period after birth.

One circumstance was the State's interest, in additio to preventing stale and fraudulent claims, in insuring that

genuine claims are satisfied. This strong interest in doing justice and reducing the number of people on the welfare rolls, is "peculiar to the State itself." Id. at 4375.

A second point favoring a longer period was the fact that a paternity suit was one of the few causes of action under Texas law where the limitation period was not tolled during the minority of the plaintiff. "Of all the difficult proof problems that may arise in civil actions generally, paternity, an issue unique to illegitimate children, is singled out for special treatment." Id.

A third factor which could exist past the first year of life was the relationship among the parties: a continuing relationship between the parents, financial support from the father, or perhaps the child's living with the father or his relatives.

In examining the constitutionality of a two-year, as opposed to a one-year, statute, it would also be instructive to review various state court decisions, even though these precede the Mills decision.

1. The period held constitutional in In re People in the Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972), appeal dism. sub nom. Colorado in the Interest of L.B. v. L.V.B., 410 U.S. 976, 93 S.Ct. 1497, 36 L.Ed. 2d 173 (1973), was five years from the child's birth, unless the father had acknowledged paternity in writing or by furnishing support. The Colorado Supreme Court distinguished the duty of support, owed equally

to legitimate and illegitimate children, from the threshold establishment of the paternal relationship, a duty borne by illegitimates only. The burden of proving this relationship and thus the obligation to support is greater where paternity is denied by the putative father. The difference in the two situations and the uncertainty of relationship attendant on illegitimacy is sufficient to justify treatment as two different classes for constitutional purposes." 498 P.2d at 1161.

The court held, with citations, that legislatures may enact statutes of limitations which "put infants and adults on the same footing, . . . and this is the effect of a statute containing no savings clause exempting infants." Id.

2. A landmark state case on this subject is Cessna v. Montgomery, 63 Ill. 2d 71, 344 N.E.2d 447 (1976). The Illinois Code provided that once paternity was established, legitimate and illegitimate children had an equal right to support. An action to determine paternity had to be brought within two years after the child's birth, except that where the father had acknowledged the child under oath or provided support, the action could be brought within two years of such an act on the father's part. The putative father's absence from Illinois also tolled the running of the statute.

The mother challenged the limitation on equal protection and due process grounds. The court reviewed the United States Supreme Court cases decided prior to that time, the most relevant of which was Gomez v. Perez, supra, noting that "[t]his appeal, therefore, picks up where Gomez left off. The broad question

here is to what extent a State may limit or burden the right of an illegitimate child to bring a paternity action." 344 N.E.2d at 452. The court was aware

> [t]hat proof of paternity places a burden on illegitimate children not shared by legitimate children . . .; it is also unavoidable. (H. Krause, Illegitimacy: Law and Social Policy 82 (1971); Note, Illegitimacy and Equal Protection, 49 N.Y.U.L. Rev. 479, 511 (1974).) Illegitimate children differ fundamentally from legitimate children in that at birth they have no legal relationship to their natural father. In the language of equal protection analysis, legitimate and illegitimate children are not similarly situated classes. It is not only entirely reasonable but essential that the State require proof of the paternity of illegitimates as a condition to asserting an otherwise equal support right.

Id. at 451-452.

The reasoning employed by the Illinois court in testing the validity of the two-year limitation period is quite similar to that found in Mills v. Habluetzel. First, a state may constitutionally limit the time during which an illegitimate child may bring a paternity action. Second, the court recognized the propriety of the state's interest in preventing litigation of stale or fraudulent claims. Third, it was stated that the Legislature could establish "any limitation period it deems appropriate so long as it is not so short as to be tantamount to the impenetrable barrier proscribed in Gomez." Id. So long as a limitation period cannot be said as a matter of law to be too brief, a court has no power to substitute its judgment for that of the Legislature. "The fact that the support right potentially forfeited is an important one does not authorize this court to select a longer period. We could only remove the limitation altogether . . . ." Id.

In light of these principles, basically the same as those voiced by the Supreme Court in Mills, the court found that Illinois' two-year statute did not unconstitutionally deny equal protection. The Constitution did not "compel" the court to strike down the statute, Id. A state study had found, "even with the two-year period, that paternity actions are beset with coercion, corruption and perjury. . . . It may well be that the longer the period between birth and suit the greater the possibility of fraud. At the very least, a defendant's proof of proof are substantially increased." Id.

The due process discussion found in Cessna will be mentioned below.

3. The Iowa Supreme Court held its statute constitutional in State v. Witkowski, 256 N.W.2d 216 (Iowa 1977), which relied heavily upon the Cessna opinion. The statute, § 675.33 of the Iowa Code, read:

> Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing, or by the furnishing of support.

After reviewing the United States Supreme Court cases which had been decided, the court found that the two-year statute did not amount to an insurmountable barrier such as that which had existed in Cooey v. Perez, supra. It was, instead a method of proof and time limitation for proving paternity. Agreeing with the rationale found in Cessna, the court found that the Iowa statute was "'carefully tuned to alternative considerations,'" 256 N.W.2d at 224, a factor which had been found

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important in United States Supreme court cases. This statute was "carefully tuned" because it provided three exceptions to the two-year period, thus alleviating potential hardships to illegitimates who fit within such exceptions.

4. Thompson v. Thompson, 285 Md. 488, 404 A.2d 269 (1979), app. dismissed, 444 U.S. 1062, 100 S. Ct. 1002, 62 L. Ed. 2d 745 (1980), uphold Maryland's statute requiring acti to be brought within two years of the child's birth, except where the putative father had acknowledged paternity in writing or had provided support, in which case the suit could be brought within two years of the last such act by the father. Md. Code Art. 16, § 66(e) (1973). The statute was part of a revision of the law which had as one of its purposes "the promotion of the general welfare and best interests of [illegitimate] children by securing to them, as near as practical, the same right to support, care and education as legitimate children." Id., § 6 (emphasis added). The court discussed the purpose of statutes of limitations; as to the statute specifically in question, it noted:

> Memories do fade with the passage of time. Circumstances change, too. After the lapse of a number of years from contact with the mother of an illegitimate child an accused male might have substantial difficulty in establishing that he was not the only individual who could have sired the child in question. This might be because changed family circumstances could cause individuals who previously would have so testified to be unwilling to state that they had sexual intercourse with the child's mother at a time when they could have sired the child in question. . . . We find no fundamental right of the child affected by this statute.

404 A.2d at 273. Thompson also discussed the due process challenge, with which we shall deal below.

5. An interesting interpretation of legislative purpose is found in Matter of Nores v. Feel, 73 Misc. 2d 942, 343 N.Y.S. 2d 220 (Fam. Ct. N.Y. Co. 1973). Under § 517 of the New York Family Court Act, action had to be brought within two years after the child's birth, unless the father had acknowledged paternity in writing or by furnishing support. However, if the mother or child was or was likely to become a public charge, the public welfare officials could sue within ten years after the birth. In this case, the putative father challenged the constitutionality of this distinction, which affected the liability of a father based upon the mother's income level.

The court criticized Matter of Wales v. Gallan, 61 Misc. 2d 681, 306 N.Y.S.2d 614 (Fam. Ct. Richmond Co. 1969). That case had held the two-year period unconstitutional, extending the limit for any suit to ten years. That case was never reviewed by a higher court, so did not become precedent. The Nores case found that Wales had not correctly analyzed the legislative purpose and related it to the classification created by the statute. Nores held that the legislative purpose was clearly not to assure to all illegitimates an equal chance of establishing paternity, or to make all putative fathers equally liable to paternity suits. Rather, it was more likely to assure that illegitimates were supported and educated by someone (mother, father, or public welfare), and to protect society by preventing the child from becoming a public charge if one of the other sources of private support was available (citing 10 Am. Jur. 2d Bastards § 75 (1963)). The statute seemed to the Nores court a very rational means of fulfilling such an objective.

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The fact that the legislature could have subjected the state to the same two-year period did not render unconstitutional the use of two different periods.

The court also noted the serious due process problem - that of obtaining proof - created for the father by a possible ten-year lapse. However, even the distinct possibility that after ten years many men would be subjected "to what is potentially a drumhead trial," 343 N.Y.S.2d at 226, did "not compel the conclusion that the 10-year statute was unconstitutional under the Due Process Clause," Id.

The plaintiff mother in the case at bar argues, in addition to her equal protection challenge, that Tennessee's statute of limitations results in an unconstitutional denial of due process of law under the federal and state Constitutions. She states,

> The statute of limitations as drafted allows a child's right to paternal support to terminate before the child has any real opportunity to assert it. Permitting a child's mother to institute paternity proceedings in behalf of her offspring does not satisfy the requirements of due process because the mother's short term interests, i.e., continuing fondness for the father or her reluctance publicly to reveal her indiscretion, may conflict with the child's[3] long term interests of support and legitimation.

The Supreme Court in Mills, supra, did not reach the due process issue because it held that Texas' one-year statute

3. TCA § 36-224(1) allows suit to be brought by the mother or her personal representative. If the child is likely to become a public charge, suit may be brought by the state department of human services or by any person. If the mother is dead or disabled, suit may be brought by the child through a guardian or next friend.

denied equal protection. However, since it held that a state could enact a limitation period shorter than a child's minority, 50 U.S.L.W. at 4373; and because it recognized that "during the child's early years [a paternity action] will often be brought by the mother," id. at 4374, we conclude by inference that to allow the mother to sue, and to grant her a time shorter than the child's minority, would not in and of itself be any more unconstitutional on due process grounds than it would be on equal protection grounds. The inquiry, then, remains essentially the same: whether the State's policy as reflected in the statute affords a fair and reasonable opportunity for the mother to decide in a rational way whether or not the child's best interest would be served by her bringing a paternity suit.

Other courts have addressed this issue and found such a statutory scheme constitutional. We quote at length from Cessna v. Montgomery, supra:

> The question, of course, is whether authorizing only the mother to bring suit unreasonably hinders the child's opportunity to secure support from his natural father. Obviously, the action must be brought by some person on the child's behalf, for the child cannot do so himself within the limitation period. And, we note parenthetically, it is within the competence of the legislature to enact a limitation period not tolled during minority. [Citations.]
>
> Possible legislative alternatives would include authorizing an action by a next friend or guardian. Plaintiffs argue that under no circumstances should the mother be permitted to sue on behalf of the child since their interests are potentially adverse. (See H. Krause, Illegitimacy: Law and Social Policy 113, 151-52 (1971); Note, Illegitimacy and Equal Protection, 49 N.Y.U.L. Rev. 479, 530 (1974); Gray & Rudovsky, The Court Acknowledges the Illegitimate: Levy v. Louisiana and Glona v. American Guarantee & Liability Insurance Co., 118 U.Pa.L. Rev. 1, 25 (1969).) Her continuing fondness for the father or her reluctance to publicly reveal her indiscretion could result in

> a decision to forego an otherwise viable suit. We do not deny this possibility exists. Yet plaintiffs' argument assumes that the child's interest is always best served by prompt suit against the father. Society still regards an illegitimate birth as something of a scandal, however, and the best interests of the child in a particular case may not always lie in the direction of public action against the natural father. It seems to us that the mother is ordinarily best positioned to make this difficult decision. Moreover, once a decision has been made to file an action, the interests of mother and child substantially coincide. Support for this conclusion is to be found in Pittman v. United States (9th Cir. 1965), 341 F.2d 739, where the court held a minor's tort claim against the government could constitutionally be barred after two years although he had no guardian ad litem, and despite a claimed conflict of interest that may have caused the father to subordinate his son's interest. The court specifically rejected plaintiff's contention that his right was meaningless because he could not act for himself during his minority.
>
> In our judgment the General Assembly could reasonably conclude that the support right of an illegitimate child is best protected by requiring the action to be brought by the mother, and that the potential harm to putative fathers defending stale claims is, on balance, greater than the potential harm to illegitimate children whose support right is forfeited by the mother's inaction.

344 N.E.2d at 453. The highest court of Maryland agreed with this reasoning in a discussion found in Thompson v. Thompson, supra, 404 A.2d at 273.

In Reynolds v. Richardson, 483 S.W.2d 747 (Tenn. App. 1971), cert. denied, 410 U.S. 944, 93 S. Ct. 1381, 35 L. Ed. 2d 611 (1973), the Court of Appeals held that when the mother and grandparents of an illegitimate child accepted $500 from the parents of the putative father in exchange for their agreement not to bring any action against him, this did not release the child's cause of action to establish paternity and for support. The mother had brought an earlier paternity suit which she dismissed upon being paid the $500. The Court of Appeals stated,

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> "This statutory duty [of support] inures to the benefit of the child and we do not conceive that the dismissal by the mother of the original warrant could be considered as foreclosing the right to later assert the father's duty to furnish necessary support."
>
> There is a distinction to be made between the release or waiver of the claims of the mother, which can validly be accomplished, and a release of the rights of the infant child which, ordinarily, should not be permitted. . . .
>
> . . .
>
> Accordingly, to the extent that this proceeding is brought by or for the benefit of the mother or maternal grandparents, it will be dismissed.
>
> To the extent that this proceeding is brought by or for the benefit of the infant child, we hold that it is not affected by the above quoted release.

483 S.W.2d at 751-752.

. .

The mother had filed and dismissed the original action v shortly after the child's birth. Thus, it can be distinguished from the case at bar in that the mother could not be said to have had a reasonable time during which to reflect upon and assess what course of action would be in the child's best interests. As a matter of policy, the mother as the party responsible for the child should have the entire two-year limitation period during which to consider a choice which will bind the child. To the extent to which the Reynolds opinion appears to hold that no action or decision made by the mother can be allowed to bind the child, it is overruled.

Several state courts have reached a contrary result and hold their limitation periods unconstitutional. As mentioned above, Matter of Walen v. Callan, supra, did so, but has not been looked upon as precedential. Two years was held

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too short a time during which to allow suit: Mothers might still have, or hope to resume a relationship with the father, or be anticipating voluntary acknowledgment or support from him. In addition to the child's economic interest in establishing paternity, he has a "psychological" interest in knowing who his father is. Turning to the State's countervailing interests in maintaining the limitation, the two-year period was for the purpose of protecting the putative father from stale claims. This was not rational, because some fathers were subject to a ten-year period. Secondly, the purpose of the ten-year period was to protect the public purse, but the effect of this was to subordinate what should have been the State's primary purpose - protecting the well-being of children. The court's solution was to lengthen the limitation period to ten years for any suit. Thus, the court did not hold that illegitimate children had to be treated the same as legitimate children.

The Montana Supreme Court struck down a three-year limitation but retained it as to actions brought by the State. Montana v. Wilson, 50 U.S.L.W. 2132 (August 8, 1981).

In Stringer v. Dudoich, 92 N.M. 98, 583 P.2d 462 (1978), the New Mexico Supreme Court held unconstitutional a statute which placed a two-year limitation upon actions for support, except where paternity had been judicially established, or had been acknowledged in writing or by the furnishing of support. There was no limitation upon actions brought by the State.

The court reasoned that illegitimates had the same right to support as did legitimates. Since there was no time limitat

upon the right of a legitimate child to bring an action, Gomez v. Perez mandated that the same right be extended to illegitimates.

The Florida Supreme Court treated the subject in depth in State v. West, 378 So. 2d 1220 (Fla. 1979). Section 95.11 (3)(b), Fla. Statutes (1975) required an action to determine paternity to be brought within four years, but under § 95.[illegible] (1)(e), the running of the time was tolled when the putative father made voluntary payments toward support.

The court pointed out that an illegitimate child had a right to support from his father, which right continued until the age of eighteen; and that placing a time limitation upon the enforcement of such resulted in

> the [legislature's] treating legitimate children differently from illegitimate children. Because of this statute, the rights of the illegitimate child to support may be foreclosed forever by failure of his mother to file suit through her ignorance, neglect, or sympathy with the father and through no fault of the child.

378 So. 2d at 1222. The court reviewed the then existing Supreme Court opinions to determine that the "substantial relationship" test should be applied in considering whether or not the differing treatment was constitutional.[4]

4. This conclusion seems correct. It is clear that the "strict scrutiny" test has been rejected by the Court, Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977); Mathews v. Lucas, 427 U.S. 495, 96 S.Ct. 2755, 49 L. Ed. 2d 651 (1976). Mills v. Habluetzel, supra, referred to the limitation as not being "substantially related" to the valid state interest in avoiding litigation of stale or fraudulent claims. When one reads the Supreme Court's numerous opinions concerning classifications based upon legitimacy, one discerns that the Court's objective has been to determine whether there is a rational relationship between the classification and the state interest. However, the relationship must be actual, logical and apparent to the reasonable person. As the Court has put it, "the scrutiny by which their showing is to be judged is not a toothless one, e.g., Jimenez v. Weinberger, 417 U.S. 628, 41 L. Ed. 2d 363, 94 S. Ct. 2496 (1974)." Mathews v. Lucas, supra, 427 U.S. at 511. "In a case like this, the Equal Protection Clause requires more than the mere incantation of a proper state purpose." Trimble v. Gordon, supra, 430 U.S. at 769.

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In this situation, the court could not find a sufficient relationship between this statute and the state's interest in barring state claims, the reason being that the illegitimate's right to support was an ongoing one, continually renewing itself until the child reached eighteen. It was held that requiring suit to be brought within four years created an impenetrable barrier to the child's right, when the State could instead have specified requirements to assure that proof of paternity would be adequate. Besides, the limitation period defeated the state's own interest in children being supported by their natural parents.

In effect, the court held that any limitation period would be unconstitutional because it would result in differing treatment of legitimate and illegitimate children.

We have carefully considered Mills v. Habluetzel, supra, all of the earlier Supreme Court and state court opinions, the various policies and arguments advanced therein, and the arguments of the parties in the case at bar. We do not feel that Mills would require a holding of unconstitutionality here, even though obviously, in the wake of Mills, two years becomes the minimum period which could possibly be upheld. It is our opinion that those cases which uphold the constitutionality of limitation periods of two years or longer are the better reasoned. Cases finding unconstitutionality do not appear to recognize a distinction which we feel is important: that between the right to paternal support throughout minority (which exists equally in favor of both legitimates and illegitimates), and the right to establish the identity of the individual who bears such duty of support (wherein legitimates and illegitimates are not similarly situated classes).

In the case of an illegitimate child, the mother (or whoever might sue in her stead) must weigh the circumstances and relationships involved and determine whether it is in the best interests of the child and of herself to bring an action to identify the father, or not to bring an action and assume the entire duty of support herself. The Hills case definitively holds that the expressed state interest in having a statute of limitations upon paternity actions - preventing litigation of stale and fraudulent claims - is a valid one. It has held that one year is as a matter of law too short a time for the mother to make a decision, because of financial, emotional and, we might add, physical strains and problems which very often endure through many months after childbirth. Even though these and other circumstances might also endure beyond the first year, we cannot say as a matter of law that the Legislature could not rationally determine that such a possibility became outweighed by the state's interest in prohibiting litigation of stale and fraudulent claims. The Legislature could rationally determine that two years is long enough for most women to have recovered physically and emotionally, and to be able to assess their and their children's situations logically and realistically. It could rationally decide, on the other hand, that to allow longer than two years would unreasonably increase the putative fathers' problems of proof in most cases. Its considerations could include the temporary nature of many relationships outside wedlock; the possibility of the formation of new relationships by the mother, putative father, and anyone else with whom she might have had relations at the relevant time; the difficulty of producing proof to rebut the mother's testimony; the statistics showing the frequency of false and very subjective testimony in this

type of case; and the fact that, by the time two years have elapsed, the mother theoretically could have had another child.

Further, the Tennessee statute is "carefully tuned" to avoid hardship in predictable groups of cases, since it contains an exception for actions against men who have acknowledged their children in writing or by supporting them,[5] and it has been held that in Tennessee, regular or substantial payments are not required in order to constitute "support." Reynolds v. Richardson, 462 S.W.2d 233 (Tenn. App. 1970). We do not today consider what circumstance outside the statute, if any, could keep the statute from operating in favor of a putative father in a particular case. In any event, the statutory exceptions should satisfy the concerns of the Supreme Court in Mills, about conditions persisting beyond one year which could make difficult the bringing of a paternity suit. The state's countervailing interest in doing justice and reducing the number of people on welfare is served by allowing the state a longer time during which to sue. The Court's concern about ongoing relationships among the parties is satisfied by the acknowledgement exceptions. This leaves the Court's concern that the limitation period is unique in not being tolled during the plaintiff's minority, but we do not find that this factor alone requires a holding of unconstitutionality of a two-year period, as opposed to any other period which can end during the plaintiff's minority.

5. VCA § 46-234(2). Justice O'Connor points out in her concurring opinion that the Texas statute does not make exceptions for those "practical obstacles to filing suit within one year."

Since the mother is the party primarily authorized by the statute to bring the action, and thus of necessity makes a decision which is binding on the child, we agree with those courts which have held that, for a myriad of reasons, she is the best qualified person to do so. The state has determined that the mother should be allowed to make this important decision, as it is essentially a private matter. So long as the child is able to be supported privately, the state allows the matter to remain private. If the mother comes to a point where she requires public assistance in order to support the child, the state and its taxpayers acquire an interest which they did not previously have, which accounts for the statute's exception for actions brought by the state.[6]

There are many decisions, both important and minor, arising in many contexts, which are made by parents on behalf of their children. These may have significant and lasting effects upon the children. A woman's decision to shoulder the duty of support and cut herself and the child off from the putative father, is but one example of such a decision. No matter what the limitation period, if it is shorter than the child's minority, the mother would still be the person making or profoundly influencing this decision.

Counsel for the mother in this case raises the possibility that a mother could evade the two-year period by giving up her job, thus losing her source of funds with which privately

6. We do not today decide the constitutionality of the eighteen-year exception to the limitation period, from the point of view of a putative father who is sued by the "Department of Human Services or any other person."

to support the child; and apply for welfare, thus forcing the State to bring a paternity suit, which can be done throughout the child's minority. Even if this could happen in a few cases, we would note that there are sanctions against abuse of the welfare system, and that such possibility does not render the Legislature's determination to set a two-year period unconstitutional. A mother could resort to such an option no matter how long or short the limitation period.

The mother petitioned to amend her complaint to add the name of the child, by the mother as next friend, as a plaintiff. The court allowed such an amendment, and the defendant and state have not appealed this ruling. However, TCA § 36-224(1) does not permit an action to be brought by the child except in case of death or disability of the mother. This error is harmless, as we hold that this action was barred by the two-year statute of limitations.

We find that the statute of limitations under consideration here meets the test enunciated by the Supreme Court in Mills: It is sufficiently long to present a reasonable opportunity for those who may sue, to assert claims on behalf of illegitimate children. Second, the general two-year limitation, although exceptions are provided where other state interests prevail, is substantially related to the state's interest in avoiding the litigation of stale or fraudulent claims. See Mills, supra, 50 U.S.L.W. at 4374. Two years, as opposed to one year, is not a period which "remove[s] an 'impenetrable barrier' to support, only to replace it with an opportunity so truncated that few could utilize it effectively." Id. at 4373. Every

illegitimate child can enforce a father's support obligation if a suit to declare paternity is brought, and two years is not, as a matter of law, an unreasonably short time. As the Supreme Court has said in another recent case,

> [f]ew statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment. . . .
>
> . . . Inheritance [in this case, enforcing the father's support obligation] is barred only where there has been a failure to secure evidence of paternity during the father's lifetime [in this case, within the period of limitations] in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of children born out of wedlock.

Lalli v. Lalli, 439 U.S. 259, 273, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978)(emphasis added).

It is not our function to substitute our opinion as to what would be the most desirable policy, for that of the Legislature. TCA § 36-224(2) meets the test of being substantially related to a legitimate state interest. Accordingly, the rulings of the trial court are reversed and this action is dismissed. Costs of this appeal shall be borne by the plaintiff-appellee.

Reversed and dismissed.

Frank F. Drowota, III, Justice.

Concur:

Harbison, C.J.
Fones, Cooper and Brock, JJ.

IN THE JUVENILE COURT OF MEMPHIS

AND SHELBY COUNTY, TENNESSEE

JEFFREY LEE PICKETT by next friend, FRANCES ANNETTE PICKETT, and FRANCES ANNETTE PICKETT, mother of JEFFREY LEE PICKETT,	*	
Plaintiff,	*	
VS.	*	NO. 31870
BRAXTON BROWN,	*	
Defendant.	*	

ORDER DECLARING A PORTION OF T.C.A. 36-224(2) UNCONSTITUTIONAL AND AMENDING PLAINTIFF'S PETITION

I

Frances Annette Pickett has filed a petition to establish paternity pursuant to Tennessee Code Annotated §36-222 et. seq. alleging that Braxton Brown is the natural father of her son, Jeffrey Lee Pickett, born November 1, 1968. This petition was filed May 24, 1978, roughly ten years after Jeffrey's birth.

Braxton Brown denied paternity and in reply alleged that he "has never, in or by any writing or other means, acknowledged or furnished any support to Jeffrey Lee

Pickett, born November 1, 1968, to Frances Annette Pickett." Based upon this answer, the Defendant moved to dismiss this paternity suit based upon the two year statute of limitations set out in Tennessee Code Annotated §36-224(2).

Plaintiff replied by filing a motion challenging the constitutionality of the two year statute of limitations as set out in Tennessee Code Annotated §36-224(2) and further moving to amend her petition to also bring the paternity suit as next friend in behalf of her child. Notice was given to the Attorney General of Tennessee who intervened to uphold the statute's constitutionality. The parties are all in agreement that if the statute of limitations is constitutional, this petition to establish paternity must be dismissed.

This Court finds that the two year statute of limitations as set out in Tennessee Code Annotated §36-224(2) violates the equal protection clause of the United States Constitution as well as Article 1, Section 8 and Article 11, Section 8 of the Tennessee Constitution and accordingly so rules.

II

A child born out of lawful wedlock has a right to support from his father. Tennessee Code Annotated §36-223, Brown v. Thomas (1968), 221 Tenn. 319, 426 S.W. 2d 496. His mother as caretaker and natural guardian merely serves as a proper person to receive the support benefits due and owing a child born out of lawful wedlock, and she can not contract away the child's right or release the putative father's obligation. Reynolds v. Richardson (App. 1971), 483 S.W. 2d 747, cert. denied, Reynolds v. Tennessee (1973), 410 U.S. 944, 35 L. Ed. 2d 611, 93 S. Ct. 1381. A right of a child born out of lawful wedlock to obtain support is a continuing right until the child reaches the age of 18 years. This right may be enforced by a paternity suit under Tennessee Code Annotated §36-222 et. seq., which is both an action to determine paternity and an action for child support. Tennessee Code Annotated §36-224(2) imposes a two year statute of limitations within which the right of a child born out of lawful wedlock to parental support must be asserted, unless the child is or is about to become a public charge, but no such limitation is imposed on the support rights of a child born in wedlock who has a court enforceable right to support in Tennessee until age 18. By enacting this

statutory limitation on the time in which paternity actions may be brought, the Legislature is treating children born out of lawful wedlock differently from children born in wedlock. Because of this statute, the rights of a child born out of wedlock to support may be foreclosed forever by the failure of his mother to file a suit through her ignorance, neglect, or collusion with the father and through no fault of the child.

The State, through the Attorney General, argues that the two year statute of limitations is essentially a rule founded upon the State's legitimate interest in preventing litigation of stale or spurious claims.

Two important State objectives are in conflict: the State's interest in the welfare of its children versus the State's interest in preventing stale claims. The child's welfare is paramount. If this child was, or was about to become, a public charge, the State or any person (pursuant to Tennessee Code Annotated §36-224(2)) could bring a paternity petition against Braxton Brown. Certainly the possibilities of fraud, perjury, or litigation of stale claims is no more inherent in a case

brought by a child who is not receiving public assistance than by a case brought for a child who is a public charge.

The Attorney General further argues that the State has a strong interest in protecting the public treasury and in assuring that at least one person will be financially responsible for a child. This interest does not exist when the child is not a public charge and is supported by its mother or some other person. When the child requires welfare payments to subsist, however, the State acquires a strong interest in identifying the father.

This argument contradicts itself and does not serve the public policy of Tennessee. Were this case to be dismissed based upon the two year statute of limitations, Frances Annette Pickett would be encouraged to quit her employment and join the welfare rolls in order to legitimate her child. In fact, this entire controversy could be circumvented by Ms. Pickett's terminating her employment and applying for welfare. Thus, were the two year statute of limitations to be constitutional, it would encourage the mothers of children born out of wedlock to seek public assistance in order to bring paternity proceedings.

III

Not only does the statute of limitations discriminate between children born in and out of wedlock, but it further discriminates between children born out of wedlock who are receiving public assistance and such children whose mothers are not receiving public assistance. Both parents are obligated to support their children. The fact that one parent is supporting a child does not terminate the other parent's obligations to contribute toward the support of the child. Under the present statute, a child who relies on the State welfare rolls for his subsistence may be legitimated at any time prior to his 18th birthday. A child who is not supported by the State, however, may be legitimated only up to his second birthday - unless his father acknowledges paternity.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Petitioner, Frances Annette Pickett, is allowed to amend her complaint to bring this petition to establish paternity in her name and in the name of her child by her as next friend;

2. That the portion of Tennessee Code Annotated §36-224(2) which provides an action shall not be brought

after this lapse of more than two (2) years from the birth of this child, unless paternity as been acknowledged by the father in writing or by the furnishing of support is unconstitutional;

3. The Attorney General and the Defendant have prayed an interlocutory appeal from this order pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure and Tennessee Code Annotated §16-408. It is hereby certified that the constitutionality of the statute of limitations as set forth in Tennessee Code Annotated §36-224(2) is the sole determining question of law in the present proceedings, and that there is substantial ground for difference of opinion as to this issue. An immediate appeal from the present order may materially advance the ultimate determination of the litigation and result in a net reduction in the duration and expense of this litigation if the present order is reversed, since the existence of the statute of limitations will affect the entire conduct of the trial proceedings and the nature of the evidence on which the Court must base its decision. Furthermore, the practice in other courts is now inconsistent with the present order, and there is need to develop a uniform body of law in this area.

It is therefore ordered that an interlocutory appeal is hereby granted on the issue of whether the statute of limitations as set forth in Tennessee Code Annotated §36-224(2) is constitutional.

ENTERED this 24 day of April, 1980.

Judge Kenneth A. Turner

APPROVED FOR ENTRY:

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A TRUE COPY ATTEST
WILLIAM O. FULMER, CLERK
Michael Shaw D.C.
4-25-80

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

TENNESSEE DEPARTMENT OF HUMAN SERVICES, ASSIGNEE OF DELORES ANNE KING,	:	
Plaintiff-Appellant	:	SHELBY JUVENILE
VS.	:	
	:	JUVENILE COURT AFFIRMED AND REMANDED
LUTHER LEON LUMLEY,	:	
Defendant-Appellee	:	

FILED
AUG 30 1982
JEWEL REDDEN, CLERK

JUDGMENT

This cause coming on to be heard upon the record from the Court of Appeals, Western Section at Jackson, application for permission to appeal having been heretofore granted, briefs and arguments of counsel; upon consideration whereof, this Court is of opinion that the Court of Appeals erred in dismissing the appeal, the action of the Juvenile Court is affirmed, and the cause is remanded for further proceedings.

In accordance with the opinion of the Court filed herein, it is, therefore, ordered and adjudged by this Court that the cause be remanded to the Juvenile Court of Shelby County for further proceedings not inconsistent with the Court's opinion, a certified copy of which will accompany the mandate on the remand, and for the collection of the costs of the court below; for all of which let mandate issue.

Costs of the appeal are taxed to the defendant, Luther Leon Lumley, for which let execution issue, if necessary.

8/30/82.

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

For Publication

August 30, 1982.

TENNESSEE DEPARTMENT OF HUMAN SERVICES, ASSIGNEE of DELORES ANNE KING,

Plaintiff-Appellant

VS.

LUTHER LEON LUMLEY,

Defendant-Appellee

FILED

AUG 30 1982

JEWEL REDDEN, CLERK

SHELBY JUVENILE
Hon. Kenneth A. Turner, Judge.

For Plaintiff-Appellant:

Harold W. Horne
Memphis, Tennessee

Michael E. Terry
Deputy Attorney General
Nashville, Tennessee

For Defendant-Appellee:

Wilburt J. Chiapella
Memphis, Tennessee

OPINION

JUVENILE COURT AFFIRMED and REMANDED.

DROWOTA, J.

This case is before this Court on a procedural issue: whether a decision by a juvenile court on a question of law in a paternity suit (TCA § 36-222 et seq.) should be appealed to circuit court or to the Court of Appeals.

The child in question was born May 6, 1972. The Department of Human Services as assignee of the mother, a welfare recipient, brought action against the defendant herein on August 11, 1977. The action was transferred to circuit court and a jury trial was actually held, in which defendant was found to be the father and liable for support of the child. However, the defendant had received no notice of the trial and successfully petitioned to have the jury verdict vacated on June 7, 1979. Subsequently, defendant filed a motion in juvenile court for dismissal of the action, pleading, inter alia, that the action was barred by the statute of limitations, TCA § 36-224(2). Consequently, on February 4, 1980, the circuit court, by consent of the parties, remanded the entire cause to juvenile court. The parties stipulated that defendant denied paternity and had not acknowledged the child in writing or by furnishing support.

On November 26, 1980, the juvenile court entered an order denying the defendant's motion to dismiss, finding that the general two-year statute of limitations did not apply to the Department of Human Services: That a petition may be brought by the Department prior to the child's eighteenth birthday. The court granted defendant permission to seek an interlocutory appeal in the Court of Appeals. That court granted permission to bring such an appeal under TRAP 9. On May 1, 1981, the plaintiff filed a motion in the Court of Appeals, requesting

that the circuit court clerk be ordered to send up the record of the proceedings which had taken place in circuit court. It was alleged that that record was needed, in addition to the record from juvenile court, in order to formulate an appropriate response to the defendant's brief and to explain the issues on appeal. The motion asserted the need to incorporate portions of the circuit court record. The only issue which had been certified to the Court of Appeals was:

> Does the statute of limitations set forth in Tennessee Code Annotated, Section 36-224(2) bar the Tennessee Department of Human Services, Assignee, from proceeding in this paternity case instituted more than two (2) years from the birth of the child where the defendant has not acknowledged paternity in writing or by the furnishing of support?

Thus, the sole issue was one of statutory interpretation. Neither questions of evidence nor of constitutionality were raised.

Meanwhile, on April 7, 1981, this Court entered an order pertaining to another case, which caused confusion in the case at bar. The April 7 order was vacated on June 22, 1981, but on June 8 the Court of Appeals denied plaintiff's motion to transfer the record from circuit court and, on its own motion, dismissed the TRAP 9 appeal.

The confusion caused by the order of April 7, 1981, was between TCA § 37-258(a), which makes the blanket provision that "any appeal from any final disposition of a child, except a disposition pursuant to § 37-234, may be made to the circuit court which shall hear the testimony of witnesses and shall try the case de novo"; and § 36-235, which provides:

> An appeal from any final order or judgment of any court having jurisdiction of the proceedings as provided for in this chapter may be perfected to the court of appeals within thirty (30) days after the entry of said order or judgment, and the same shall be reviewable de novo as are other equity appeals.

The appeal in this case was not from a "final disposition of a child," § 37-258(a), but from a question of law decided by a court "having jurisdiction of the proceedings as provided for in this chapter [Title 36, Chapter 2, Bastardy]," § 36-235. Therefore, the Court of Appeals was correct in granting permission to appeal under TRAP 9 in the first instance; and it was in error in dismissing the appeal after having granted the permission.

Normally, we would remand the cause to the Court of Appeals for consideration of the underlying issue certified to it by the juvenile court. However, in this case, the same issue was ruled upon by this Court in the case of Frances Annette Pickett v. Braxton Brown, ___ S.W.2d ___ (Tenn. 1982), released simultaneously this date. That is to say, Pickett holds that TCA § 36-224(2) creates an exception to the general two-year limitation period in paternity actions; and that in any case where the child is or is likely to become a public charge, suit may be filed by the Department of Human Services throughout the eighteen years after the birth of the child. To us, this is the plain meaning of the statute; it cannot be construed to mean, as defendant Lumley contends, that the Department is bound by the two-year period if the putative father has not acknowledged the child in writing or by providing support.

This issue having been disposed of, it would be pointless to remand the cause to the Court of Appeals in this particular

case. Instead, we reverse the ruling of the Court of Appeals dismissing the Rule 9 appeal, and remand the cause to the juvenile court of Shelby County, from which the interlocutory appeal was taken, for further proceedings.

The costs of this appeal are taxed to the defendant Lumley.

Affirmed action of the juvenile court and remanded.

Frank F. Drowota, III, Justice.

Concur:

Harbison, C.J.
Fones, Cooper and Brock, JJ.

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

FRANCES ANNETTE PICKETT,	*	
Plaintiff-Appellee,	*	
VS.	*	
BRAXTON BROWN,	*	No. Shelby Juvenile 1
Defendant-Appellant,	*	
WILLIAM M. LEECH, JR.,	*	
Intervenor-Appellant.	*	

NOTICE OF APPEAL
TO
THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the plaintiff-apppellee herein, Frances Annette Pickett, appeals to the Supreme Court of the United States the judgment entered in the above styled cause by the Supremo Court of Tennessee on August 30, 1982, upholding the constitutionality of the two (2) year statute of limitations as set forth in Tennessee Code Annotated, § 36-224 (2). This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

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for Plaintiff-Appellee
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(901) 761-3140

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing notice of appeal has been mailed by U.S. Mail, first class postage prepaid, to counsel for all parties concerned: Mr. William M. Leech, Jr., Attorney General for the State of Tennessee at 450 James Robertson Parkway, Nashville, Tennessee 37219; Ms. Lee Breckenridge, Assistant Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219; and Mr. James R. McGarrh, Jr., counsel for Braxton Brown, at Suite 1930, 100 North Main Building, Memphis, Tennessee 38103, this the 9th day of September, 1982.

Harold W. Horne

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SEP 13 1982

FRANCES ANNE PICKETT
vs.
BRAXTON BROWN

STATE OF TENNESSEE
SUPREME COURT
COURT OF APPEALS
COURT OF CRIMINAL APPEALS
Jewel Redden, Clerk

Shelby Juvenile No. 1

Jackson Sept. 9 19 82

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES received and filed today.

Respectfully,
JEWEL REDDEN, Clerk